when calculating common line permitted revenue for the following year, the incumbent LEC would base those calculations on $6.33 per line rather than $6.00 per line.

233. If we permitted common line revenues to increase with the average growth rate of all common lines, we would eliminate the windfall or shortfall that now occurs whenever multiline business lines grow faster or slower than primary residential and single-line business lines. Accordingly, we invite comment on revising the formula in Section 61.46(d)(1) so that permitted common line revenues increase with the average growth rate of all common lines. We also invite interested parties to propose specific revisions to this formula. Finally, we solicit comment on whether any disproportionate increase or decrease in common line subsidy has created an imbalance between ratepayer and stockholder interests, of the kind we discussed at length in the *LEC Price Cap Performance Review Order*[562] and in this Section of this Order. If so, should we require price cap LECs to make exogenous adjustments to their common line PCIs to correct this imbalance on a going-forward basis?

2. Reorganization of Baskets and Bands

234. In the *Access Reform First Report and Order*, the Commission revised the local switching rate structure to require LECs to charge flat charges for dedicated trunk ports.[563] Price cap LECs established these new rate elements in tariffs that took effect on January 1, 1998. Because of the relative levels of demand for trunk ports and local switching, a price cap LEC could, in subsequent tariff filings, reduce its flat trunk port charges substantially, and make up that revenue through a relatively small increase in its per-minute local switching charge. Some price cap LECs did in fact reduce their recently-created flat trunk port charges substantially in their 1998 annual access filings, and some carriers have eliminated those charges in some study areas in their 1999 annual access filings.[564] We invite comment on whether we should modify our price cap rules to place flat charges and traffic-sensitive charges in separate baskets, to prevent LECs from eliminating their existing flat trunk port charges, and thereby circumventing the local switching rate structure rules we adopted in the *Access Reform First Report and Order*. In addition, we invite parties to propose specific services to be included in each basket, if we decide that any modifications to the basket configurations are warranted. Alternatively, we invite comment on whether adopting a capacity-based local switching rate structure would be sufficient to preclude LECs from entirely circumventing the local switching rate structure rules adopted in the *Access Reform First Report and Order*.

---

[562] *LEC Price Cap Performance Review Order*, 10 FCC Rcd at 9069-70.

[563] *Access Reform First Report and Order*, 12 FCC Rcd at 16035-36.

[564] Sprint eliminated its trunk port charges in its Arizona study area, and GTE eliminated these charges in its Northern California, Montana, and Minnesota study areas.

3. Inflation Measure

235. Currently, the inflation measure in the PCI formula is the "Fixed Weight Price Index for Gross Domestic Product, 1987 Weights."[565] The Bureau of Labor Statistics (BLS) now measures inflation with a chain-weighted GDP-PI, which bases weights for the current year's index on the prior year. We also note that the Commission used chain-weighted price indices in its calculation of a new X-Factor based on total factor productivity.[566] We tentatively conclude that we should make the inflation measure in the PCI formula consistent with BLS's measure and with that used in setting the X-Factor. We seek comment on this tentative conclusion.

E. CLEC Access Charges

1. Background

236. As we discuss above,[567] the Commission requested comment in the *Access Reform NPRM* on the regulation of terminating access charges of both incumbent LECs and CLECs. The Commission noted that, with originating access, the calling party has the choice of service provider, the decision to place a call, and the ultimate obligation to pay for the call.[568] The calling party also is the customer of the IXC that purchases the originating access service.[569] The Commission noted that, unlike originating access, the choice of an access provider for terminating access is made by the recipient of the call. It suggested that, because neither the originating caller nor its long-distance service provider can exert substantial influence over the called party's choice of terminating access provider, the terminating end of a long-distance call may remain a bottleneck, controlled by the LEC providing access to a particular customer. The Commission also sought comment on the continued treatment of incumbent LEC originating "open end" minutes as terminating minutes for access charge purposes, and whether to extend that approach to CLECs.[570] The Commission noted that, in

[565] Section 61.3(q) of the Commission's Rules, 47 C.F.R. § 61.3(q).

[566] *See, e.g., Price Cap Fourth Report and Order*, 12 FCC Rcd at 16784 (App. D).

[567] *See* Section VII.A, *supra*.

[568] *Access Reform NPRM*, 11 FCC Rcd at 21472.

[569] *Id.*

[570] *See id.* at 21477. "The term open end of a call describes the origination or termination portion of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends)." 47 C.F.R. § 69.105(b)(1)(ii).

some cases, such as 800 and 888 service, the called party, which pays for the call, is unable to influence the calling party's choice of provider for originating access services.[571]

237. Based on the record submitted in response to the *Access Reform NPRM*, the Commission concluded that non-incumbent LECs should be treated as non-dominant in the provision of terminating access.[572] The Commission found that there was insufficient evidence in the record to determine that CLECs had the ability to exercise market power in the provision of terminating access.[573] The Commission further concluded that, as CLECs attempt to expand their market presence, the rates of incumbent LECs or other potential competitors would constrain the CLECs' terminating access rates.[574] The Commission decided, therefore, not to adopt any regulations at that time governing the provision of terminating access provided by CLECs because CLECs did not appear to possess market power.[575] The Commission indicated, however, that it would revisit the issue if there were sufficient indications that CLECs were imposing unreasonable terminating access charges.[576] Although the Commission did not address the issue of CLEC originating access, it indicated, in the context of incumbent LEC originating access, that it believed that new entrants would eventually exert downward pressure on originating access rates.[577] The Commission also concluded that the continued treatment of "open end" originating minutes, such as those for 800 or 888 services, as terminating minutes for access charge purposes was appropriate because the called party, which pays for the 800 or 888 calls, has limited ability to influence the calling party's choice of access provider.[578]

---

[571] *See id.*

[572] *See Access Reform First Report and Order*, 12 FCC Rcd at 16140; *see also* Section VII.A, *supra* for a definition of non-dominant carrier and a detailed discussion of the Commission's conclusions.

[573] *See Access Reform First Report and Order*, 12 FCC Rcd at 16140; *see also* Section VII.A. supra.

[574] *See Access Reform First Report and Order*, 12 FCC Rcd at 16140; *see also* Section VII.A. *supra.*

[575] *See Access Reform First Report and Order*, 12 FCC Rcd at 16141-42; *see also* Section VII.A, *supra.*

[576] *See Access Reform First Report and Order*, 12 FCC Rcd at 16140 (noting that CLEC terminating access rates exceeding originating rates in the same market may suggest the need to revisit the regulatory approach; similarly, CLEC rates that exceed incumbent LEC terminating rates in the same market may suggest that a CLEC's terminating access rates are excessive).

[577] The Commission concluded that new entrants, by purchasing unbundled network elements or providing facilities-based competition, eventually will exert downward pressure on incumbent LEC originating access rates. *Id.* at 16135-36.

[578] *Id.* at 16140. The Commission noted that incumbent LEC access charges for "open end" minutes would be governed by the same requirements applicable to terminating access provided by incumbent LECs. *Id.* at 16142. In order to address the potential that incumbent LECs might charge unreasonable rates for terminating access, the Commission limited the price cap incumbent LEC recovery of TIC and common costs from

238. Since that time, however, we have received indications that the Commission may have overestimated the ability of the marketplace to constrain CLEC access rates. In particular, IXCs allege that a substantial number of CLECs impose switched access charges that are significantly higher than those charged by the incumbent LECs with which they compete,[579] suggesting that the Commission may need to revisit the issue of CLEC access rates. If market forces fail to constrain CLEC access rates, requiring IXCs to pay access charges set unilaterally by CLECs is not economically efficient and does not further the goals of the Telecommunications Act of 1996. We are reluctant, however, to regulate rates charged by competitive entrants to the local exchange and exchange access markets and prefer instead to seek a marketplace solution that might constrain CLEC access rates.

2. Discussion

239. Throughout the *Access Reform* proceeding, the Commission has questioned whether CLECs possess market power over terminating access service and whether such power precludes market forces from ensuring that terminating access charges are just and reasonable. In the *Access Reform NPRM*, the Commission invited parties to comment on whether CLECs have market power over IXCs that need to terminate long-distance calls to CLEC customers, and, if so, whether the Commission should subject CLEC terminating access rates to some form of regulation.[580] Given the rapidly evolving telecommunications industry, we again invite parties to comment on this issue.

240. In particular, in response to the *Access Reform NPRM*, USTA challenges the fundamental premise that, because the called party is not paying for the call, terminating access charges are shielded from downward market pressures.[581] According to USTA, if a LEC overprices terminating access relative to originating access, a pair of callers in repeated communications would have an incentive to alter their pattern of calls to favor the lower-priced alternative.[582] In the *Access Reform First Report and Order*, the Commission

---

terminating access rates for a limited period with the eventual elimination of any recovery of common line and TIC costs through terminating access charges. *Id.*

[579] *AT&T Declaratory Ruling Petition*, Appendix A (alleging that a number of CLECs impose charges that are in some cases more than twenty times higher than those charged by incumbent LECs with which they compete); see also Sprint Reply at 3; Cable & Wireless Comments at 2. Unless otherwise indicated, all citations to comments and replies in this section of the Notice refer to comments and replies submitted in response to the *AT&T Declaratory Ruling Petition.*

[580] *See Access Reform NPRM*, 11 FCC Rcd at 21476.

[581] USTA *Access Reform NPRM* Comments, Attachment 3 at 12.

[582] *Id.*; *see also* TCI Access Reform NPRM Reply at 32 (the Commission's analysis of a calling party's incentives does not consider the incentives that called parties have because of the value they place on receiving calls as well as originating them).

stated that it was not convinced that a significant competitive impact would result from changes in calling patterns between pairs of callers.[583] Based on their experiences since the *Access Reform First Report and Order*, we ask parties to comment on USTA's hypothesis. In addition, in response to the *Access Reform NPRM*, TCI disputes the premise that CLECs may possess market power. TCI asserts that CLECs do not have market power because IXCs can exercise bargaining power in negotiating terminating access charges with CLECs.[584] TCI argues that the absence of an agreement will not prevent an IXC from completing many calls; instead, the IXC simply will have to pay terminating access to a different carrier.[585] The absence of an agreement would be very costly to a CLEC, however, because it is quite possible that switched local service would not be a viable business without interconnection agreements with all the major IXCs.[586] We ask parties to comment on TCI's hypothesis.

241. TCI's comments also raise the fundamental question of an IXC's obligation to accept or deliver traffic from or to a LEC. The Bureau recently released an order in which it found that AT&T had failed to take reasonable and necessary steps to terminate its access service arrangement with MGC, a CLEC.[587] The Bureau also found, however, that MGC had failed to identify a legal impediment to an IXC declining to purchase a particular LEC's access service,[588] but it emphasized that its holding was limited to the specific factual record[589] and the arguments raised by the parties.[590] The Bureau stated that:

> by holding that none of the obligations we discuss above prevents AT&T from declining MGC's originating access service, we do not imply that AT&T is entirely without constraint in determining where, how, or whom it will provide its long distance services. Naturally, in providing those

---

[583] *Access Reform First Report and Order*, 12 FCC Rcd at 16136.

[584] Although TCI's point is limited to terminating access charges, presumably it also could apply to originating access charges.

[585] TCI *Access Reform NPRM* Reply, Attachment A at 8.

[586] *Id.* TCI appears to assume that an IXC is not obligated to deliver traffic to a terminating access provider if the IXC believes the rates are too high. We note that this issue is raised by AT&T's Declaratory Ruling Petition that we denied in this Order and addressed in the Bureau's decision in *MGC Communications*.

[587] *MGC Communications* at ¶ 16.

[588] *Id.* at ¶ 8.

[589] At the hearing, MGC appeared to concede that, under its tariff, an IXC prospectively may refuse to accept a LEC's originating access traffic. *MGC Communications* at ¶ 8. MGC also argued, however, that the equal access, dialing parity, and payphone provisions of the Act obligate IXCs to accept CLEC traffic. *Id.* The Bureau rejected these arguments. *Id.* at ¶ 12.

[590] *Id.* at ¶ 12.

> services, AT&T remains subject to a broad variety of statutory and regulatory constraints that are too numerous to list here, but which include, without limitations, sections 201, 202, 203, and 214 of the Act and section 63.71 of the Commission's rules.[591]

242. We now solicit comment on the issue the Bureau explicitly did not reach: whether any statutory or regulatory constraints prevent an IXC from declining a CLEC's access service. Commenters should identify any such constraints with particularity. If there are circumstances in which an IXC may decline to purchase a CLEC's access service, what are the ramifications for the customer of the CLEC? How would such a customer make or receive long-distance calls? Is such a regime consistent with the goals of section 254 of the Act that consumers in all regions of the nation have access to telecommunications services, including interexchange services?[592] Provided that an IXC may refuse a CLEC's access traffic, is this a market-based solution to excessive CLEC rates that obviates the need for any regulatory action by the Commission?

243. If an IXC may refuse a CLEC's access service, we also solicit comment on whether an IXC can refuse to accept traffic from an incumbent LEC when there are no competitive alternatives to the LEC, *e.g.*, a rural area with only one local exchange provider.[593] We note that the Commission regulates incumbent LEC access charges.[594] If an incumbent LEC's rates are within the Commission's mandates, should they be presumed to be just and reasonable? If so, should an IXC be allowed to refuse an incumbent LEC's access service despite the fact that the LEC's access rates are just and reasonable? What are the ramifications for the customer in that case? If there are no competitive alternatives, how would the end user of the LEC receive long-distance service if the IXC refused the LEC's access service? If in fact an IXC may refuse a LEC's access service, we also solicit comment on whether an IXC can accept traffic from incumbent LECs but refuse to accept traffic from CLECs. What are the ramifications for both the end users of the CLEC and the incumbent LEC? Would this lead to confusion on the part of the calling party who would not be aware until it placed its call, and the call did not go through, that the called party was served by a CLEC? Should an IXC's obligations to accept or deliver traffic from or to a CLEC differ for originating and terminating access services?

---

[591] *Id. See also* 47 U.S.C. §§ 201, 202, 203, and 214; 47 C.F.R. § 63.71 (establishing procedures for discontinuance or impairment of service by domestic, non-dominant carriers).

[592] 47 U.S.C. § 254(b)(3).

[593] We note that AT&T did not address the issue of incumbent LEC access services. *AT&T Declaratory Ruling Petition* at n.4.

[594] *See Access Reform First Report and Order*, 12 FCC Rcd at 16135-38.

244. We acknowledge that CLEC access rates may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs.[595] Requiring IXCs to bear these costs, however, may impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC. IXCs currently spread their access costs among all their end users. We solicit comments on solutions to this problem. Might the problem of excessive CLEC access rates be solved if IXCs charged different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company? Because their long-distance bills would fluctuate based on the level of access charges, end users presumably would switch to LECs that charged lower access charges in order to reduce their long-distance bills. Is this a market-based solution to the issue of CLEC access rates?

245. If it is a market-based solution, we solicit comments on whether section 254(g) permits IXCs to charge different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company.[596] The legislative history of section 254(g) indicates that it is intended to ensure that rates *between geographic areas* are equal.[597] If section 254(g) permits IXCs to charge different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company, what practical difficulties might that raise with respect to ensuring that urban and rural rates are comparable? How, for example, might one compare urban and rural rates if IXCs charge different rates within an urban area?

246. We also seek comment on whether mandatory detariffing of CLEC interstate access charges might address any market failure to constrain terminating access rates. Mandatory detariffing would eliminate the CLECs' ability unilaterally to set terminating access rates by filing a tariff and to avoid negotiating those rates in the marketplace by

---

[595] *See, e.g.*, Cox Comments at 5 (a CLEC that primarily serves residential customers will have a low volume of access traffic (and hence higher per minute costs) relative to a CLEC of equal size that primarily serves businesses); OpTel Comments at 5 (CLECs' higher access rates often reflect the higher cost structure of a facilities-based CLEC in the process of building a new network relative to the cost structure of an incumbent LEC with an established network).

[596] *See* 47 U.S.C. § 254(g) (The Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State); *see also* 47 C.F.R. § 64.1801.

[597] In the Joint Explanatory Statement, the conferees stated that: "[n]ew section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." S. Rep. No. 230, 104th Cong., 2nd Sess. at 132 (1996) (Joint Explanatory Statement).

relying on the filed tariff doctrine.[598] To the extent that detariffing encourages parties to negotiate rates for terminating access, is it a market-based solution to excessive terminating access charges? We note, however, that our decision to require mandatory detariffing by IXCs has been stayed by the court of appeals,[599] and the court's ultimate decision likely will implicate our ability to impose mandatory detariffing on CLECs. Finally, we seek comment on whether the adoption of any other solution should serve only as a "stopgap" measure until such time as we may be able to require detariffing.

247. We strongly prefer to rely upon a marketplace solution, such as those discussed above, to constrain CLEC access rates. Nonetheless, in the event that we conclude that legal or other impediments preclude adoption of a market-based solution, we also seek comment on a regulatory backstop to constrain CLEC access rates. In the *Access Reform NPRM*, the Commission invited parties to address whether the incumbent LECs' terminating access charges should serve as a benchmark to evaluate the reasonableness of CLECs' terminating rates. It suggested that a CLEC's terminating access charges might be presumptively just and reasonable if they were less than or equal to the terminating access charges of the incumbent LEC with which the CLEC competes.[600] If, on the other hand, the CLEC's terminating access charges exceed the incumbent LEC's charges, the CLEC could be required to provide cost support for its charges or, alternatively, it might be required to collect the difference from its end users, rather than IXCs.[601] We again seek comment on these proposals and whether they also should apply to originating access rates. Should access rates below a particular benchmark be presumed just and reasonable, thus providing CLECs with a defense in the context of a section 208 complaint?[602] We seek comment on what rates to use as a benchmark, *e.g.*, the incumbent LEC rate in the area served by the CLEC, or some other terminating access rate.[603]

---

[598] In its declaratory ruling petition, AT&T alleges that its attempts to negotiate terminating access charges have stalled because many CLECs take the position that, due to the "filed tariff doctrine," AT&T is obligated to accept services from the CLEC at prices chosen by the CLEC. *AT&T Declaratory Ruling Petition* at 3, n. 2; *see* Section VII.B. for a discussion of the filed tariff doctrine.

[599] *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20741-43 (1996) (*Tariff Forbearance Order*), *stay granted*, MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. filed Feb. 13, 1997).

[600] *Access Reform NPRM*, 11 FCC Rcd at 21476.

[601] *Id.*

[602] 47 U.S.C. § 208.

[603] Commenters provide a number of suggestions on what rate to use as a benchmark. For example, Cox asserts that, if the Commission is going to use a benchmark, it should use the rates of smaller, more geographically dispersed non-price cap incumbent LECs, such as the incumbent LECs participating in the NECA tariff. Cox *Access Reform NPRM* Comments at 6. Although MCI does not believe that the interstate access rates charged by NECA member companies are just and reasonable, it suggests that NECA rates levels may be a

248. We also seek comment on whether any benchmark should vary depending on various criteria, such as, for example, whether the CLEC serves high cost areas or low cost areas. Alternatively, should any benchmark take the form of a sliding scale that declines as the number of access minutes per CLEC switch increases? Would it be appropriate to estimate this benchmark using incumbent LEC data? If parties believe that the benchmark should vary depending on various criteria, we solicit comment on these criteria, on what methodology we should use to establish alternative benchmarks, and what criteria we should use to determine which benchmark should apply to an individual CLEC.

249. Assuming we were to employ some form of a benchmark, we seek comment on whether to provide an "escape valve" that would allow CLECs wishing to charge more than the benchmark to collect those charges from end users (either the called party or calling party).[604] In particular, we seek comment on an "end party pays" proposal that would require CLECs to collect the difference between the benchmark terminating access rate and the CLEC terminating access rate from end users (either the calling or called party) rather than from the IXC.[605] We note that this "end party pays proposal" would resolve the problems associated with IXC averaging requirements,[606] by in essence, "deaveraging" terminating access by charging the end user, rather than the IXC, for the terminating access.

250. In particular, if the *called* party pays, the person receiving the call would be charged the difference between the CLEC terminating access rate and the benchmark terminating access rate. We ask parties to comment on whether charging the called party would yield an increase in the number of uncompleted calls due to the called parties' refusal to accept the charges. In the *Access Reform First Report and Order*, the Commission found that a "called party pays" proposal may be disruptive to wireline services.[607] Given the

---

useful starting point in setting a benchmark because they are supposed to be set at a level equal to the national averaged rate had all incumbent LECs remained in the NECA pool. MCI Access Reform NPRM Reply Comments at 6 and n.24. Sprint states that, although it has no objection to paying NECA level terminating access charges to CLECs that serve high costs areas also served by NECA carriers, there is no justification for using NECA rates as a benchmark for CLEC rates in the low cost high-density metropolitan areas. Sprint Access Reform NPRM Reply Comments at 7.

[604] *See, e.g., Access Reform NPRM*, 11 FCC Rcd at 21476.

[605] *See, e.g., id.*

[606] *See* Section VII.A. supra for a discussion of IXC averaging requirements.

[607] *See Access Reform First Report and Order*, 12 FCC Rcd at 16138. We note that, in response to the Access Reform NPRM, the California Commission indicated that it opposed any "called party pays" proposal because customers most likely would not understand why they were paying to receive a call and some customers would refuse to accept calls if they knew that doing so would mean incurring a charge. California Commission *Access Reform NPRM* Comments at 18.

increasing popularity of wireless services and that most wireless companies charge the called parties for receiving calls, we seek comment on the continued validity of the Commission's concerns that consumers would be adverse to a "called party pays" proposal in the context of wireline services. In addition, we invite parties to address how to accomplish charging the customer receiving the call for terminating access.

251. If, conversely, the calling party pays, the person making the call, rather than the IXC, would be charged the difference between the CLEC terminating access rate and the benchmark terminating access rate. We seek comment on whether wireline consumers would be adverse to a "calling party pays" regime. We note that such a regime is offered widely by wireless providers abroad, and on a much more limited basis by some providers of cellular, paging and Personal Communications Service (PCS) in the United States.[608] Further, we seek comment on whether requiring called or calling parties to pay for a portion of terminating access might encourage competition for terminating access. In addition, we question whether these "end party pays" proposals should be limited only to CLECs, and if so, whether this would result in confusion on the part of end users, *i.e.*, incumbent LEC end users would not be charged for terminating access but CLEC end users would be.

252. Adoption of a "calling party pays" regime would require notification to the party making the call that it would be responsible for terminating access charges in addition to a long distance charge from its IXC. We seek comment on the development of a notification system. In particular, we seek comment on a proposal that the notification be developed in cooperation with the States and include: (1) notice that the calling party will be responsible for the terminating access charges; (2) the terminating access rates that the calling party incurs will be charged by the terminating LEC provider; and (3) notice that the calling party may terminate the call prior to incurring any charges. If we were to adopt a "called party pays" proposal, the *called party* would be notified at the time it signed up for service from a CLEC that it would have to pay terminating access charges for incoming long-distance calls. Accordingly, for the "called party pays proposal," we seek comment on the development of a more limited notification that merely delineates local calls from "called party pays" calls.

253. In response to *AT&T's Declaratory Ruling Petition*, Bell Atlantic proposes that the Commission link the terminating access rates of all local carriers, both CLECs and

[608] *See Access Reform NPRM*, 11 FCC Rcd at 21474. In the context of wireless services, the Commission recently adopted a declaratory ruling that clarified that calling party pays, a service whereby the party placing the call to a wireless customer pays the wireless airtime charges, is a commercial mobile radio service offering. *See* Calling Party Pays Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137 (rel. July 7, 1999). In the same proceeding, the Commission also initiated a rulemaking requesting comments on a uniform notification requirement, the effect of competitive pressures on calling party pays rates, and whether it could and should require LECs to bill and collect for a CMRS carrier's calling party service. *See id.*

incumbent LECs, to originating access rates.[609] Bell Atlantic argues that originating rates are not excessive because competitive forces keep them in check.[610] It hypothesizes that, if the Commission required every carrier to set terminating rates at a level no higher than its originating rates, those competitive forces would constrain terminating access rates as well.[611] We seek comment on Bell Atlantic's proposal. In order to address the potential that incumbent LECs might charge unreasonable rates for terminating access, the Commission limited price cap incumbent LEC recovery of TIC and common line costs from terminating access rates for a limited period, with the eventual elimination of any recovery of common line and TIC costs through terminating access charges.[612] Furthermore, the Commission declined at that time to link terminating rates to originating rate levels because that approach would not substantially affect terminating access rates where originating access rates were not subject to competitive pressures.[613] The Commission also found that linking an incumbent LEC's terminating access rates to its originating access rate might reduce the incumbent LEC's incentive to lower its originating access rates.[614] We now seek comment on whether we should link the rates that all local carriers, both CLECs and incumbent LECs, charge for terminating access to originating access rates. We also seek comment on the possible effects on competition between incumbent LECs and CLECs if we were to adopt Bell Atlantic's proposal, but limit it to CLECs.

254. Some commenters have suggested that CLECs are charging excessive originating access rates.[615] In the *Access Reform NPRM*, the Commission stated that as long as IXCs can influence the choice of the access provider, a LEC's ability to charge excessive originating access rates is limited, as IXCs will shift their traffic from that carrier to a competing access provider.[616] In the *Access Reform First Report and Order*, the Commission did not specifically address the issue of CLEC originating access rates. Instead, in the context of incumbent LEC originating access rates, the Commission concluded that new entrants, by purchasing unbundled network elements or providing facilities-based competition, would

---

[609] Bell Atlantic Comments at 2. See also Spectranet Access Reform NPRM Comments at 10 (supporting requiring that all LECs (both CLEC and incumbent LECs) price terminating access the same as originating access in each applicable geographic market).

[610] *Id.*

[611] *Id.*

[612] *Access Reform First Report and Order*, 12 FCC Rcd at 16136.

[613] *Id.* at 16137.

[614] *Id.*

[615] *AT&T Declaratory Ruling Petition* at 2; Sprint Reply at 3; Cable & Wireless Comments at 2.

[616] *Access Reform NPRM*, 11 FCC Rcd at 21472.

eventually exert downward pressure on originating access rates.[617] Given the complaints by AT&T and others regarding excessive CLEC originating access rates,[618] we seek comment on a marketplace solution that would constrain CLEC originating access rates. In particular, we seek comment on whether any of the terminating access proposals discussed above also may apply to originating access rates. Finally, we seek comment on whether an entirely separate solution is necessary to resolve the issue of originating access charges. If a separate solution is necessary, we solicit comments on what that solution should be.

255. In the case of both originating access associated with "open end" services, such as 800 or 888 calls, and terminating access, the party paying for the call does not choose the access provider. We invite parties to comment on whether, therefore, to treat CLEC "open end" originating minutes the same as CLEC terminating minutes for access charge purposes.[619] Assuming "open end" minutes are treated the same as terminating minutes for access charge purposes, we seek comment on whether the calling party and called party pays proposals set forth above also might work for "open end" minutes, or whether modifications are needed for "open end" minutes. For instance, if we were to adopt a *calling party pays* proposal for originating "open end" minutes, we might require the calling party to pay the portion of the access charges that exceed the benchmark for 800 or 888 calls, because it is the caller, in that instance, that makes the choice of provider for originating access. Finally, we seek comment on whether an entirely separate solution is necessary to resolve the issue of "open end" originating access charges. If a separate solution is necessary, we solicit comments on what that solution should be.

256. We strongly prefer not to intervene in the marketplace, particularly with respect to competitive new entrants, unless intervention is necessary to fulfill our statutory obligation to ensure just and reasonable rates. If market forces are not operating to constrain CLEC access charges, we seek the least intrusive means possible to correct any market failures.

257. Finally, in the *Access Reform NPRM*, the Commission sought comment on any less intrusive methods of ensuring that a CLEC's originating and terminating access charges

---

[617] *Id.* at 16136.

[618] *AT&T Declaratory Ruling Petition* at 2; Sprint Reply at 3; Cable & Wireless Comments at 2.

[619] We note that, in response to the *Access Reform NPRM*, TCI argued that originating "open end" minutes do not constitute a bottleneck, and, thus should not be treated as terminating access minutes, because originating "open end" access rates will respond to the market. See TCI *Access Reform NPRM* Reply at 34 (An access provider with high originating access charges would discourage businesses from making open end services available. In such situations, the calling party would lose the benefit of that service and change to an access provider with lower originating access rates.) In making its argument that "open end" minutes should not be treated as terminating minutes for access charge purposes, TCI assumes that terminating access rates are regulated.

are just and reasonable.[620] We do so again. We further invite parties to comment on how small business entities, including small incumbent LECs and new entrants, will be affected by the proposals above regarding CLEC access charges.

IX. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Analysis

258. As required by the Regulatory Flexibility Act (RFA),[621] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Access Reform NPRM*.[622] The Commission sought written comments on the proposals in the *Access Reform NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended.[623] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for and Objectives of this Report and Order

259. This proceeding is being conducted to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The Commission continues the process it began in 1997 with the Access Reform First Report and Order to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that our own regulations do not unduly interfere with the operation of these markets as competition develops.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

260. We have already addressed the general concerns raised by Rural Telephone Coalition that this proceeding may "prejudge and prejudice" a later rulemaking for non-price cap LECs, and that the delay in implementing that rulemaking may injure non-price cap

---

[620] *Access Reform NPRM*, 11 FCC Rcd at 21476.

[621] *See* 5 U.S.C. § 603.

[622] Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 (1996) (*Access Reform NPRM*).

[623] *See* 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

LECs.[624] Otherwise, the comments filed do not address the specific issues contained in this Order.[625]

3. Description and Estimate of the Number of Small Entities to which the Rules Will Apply:

261. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[626] The RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[627] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[628] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). [629] The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.[630]

Total Number of Telephone Companies Affected:

262. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[631] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their

---

[624] *See Access Reform First Report and Order*, 12 FCC Rcd at 16161-62.

[625] *See* USTA Comments at 16-17, 56-57; SNET Comments at 29; Rural Telephone Coalition Comments at 2-3, 10-13, 15; Frontier Comments at 5-6.

[626] 5 U.S.C. § 603(b)(3).

[627] *Id.* § 601(6).

[628] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[629] Small Business Act, 15 U.S.C. § 632 (1996).

[630] 13 C.F.R. § 121.201.

[631] 5 U.S.C. § 601(3).

field of operation because any such dominance is not "national" in scope.[632] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

263. *Price Cap Local Exchange Carriers.* The rulemaking contained in this Order applies only to price cap LECs. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, we estimate that significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals.

4. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

264. In this Report and Order, we adopt changes in pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of interexchange services from price cap regulation. These changes will affect all price cap LECs, including small price cap LECs, and will require small price cap LECs to make one or more tariff filings should they desire to obtain the additional pricing flexibility, which will involve the usage of legal skills, and possibly accounting, economic, and financial skills.

5. Burdens on Small Entities, and Significant Alternatives Considered and Rejected

265. In Sections III, IV, and V, we adopt forms of regulatory relief for price cap LECs that can be granted under current market conditions and do not require a further competitive showing. Price cap LECs each will have to file at least one tariff to implement this relief, but the administrative burdens they will face in future filings will diminish as a result. In Section VI, we grant additional pricing flexibility to price cap LECs that make "competitive showings," or satisfy "triggers," to demonstrate that market conditions in

[632] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

particular areas warrant the relief at issue. In order to minimize the administrative burdens on price cap LECs, we base our triggering mechanisms on objectively measurable criteria.

266. We considered and rejected alternative triggers and granting a different amount of pricing flexibility. In setting the triggers and relief in the manner we did, we attempted to balance the interests of price cap LECs in being able to gain regulatory relief, with our interest in protecting ratepayers from unreasonable rate levels and new entrants from anti-competitive actions.

6. Report to Congress

267. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[633] In addition, the Commission will send a copy of this Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[634]

B. Initial Regulatory Flexibility Act Analysis

268. As required by the Regulatory Flexibility Act (RFA),[635] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided below in Section IX.D. The Office of Public Affairs will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[636] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[637]

269. Need for, and objectives of, the proposed rules. Consistent with the Telecommunications Act of 1996, the Commission has revised its interstate access charges to

---

[633] 5 U.S.C. § 801(a)(1)(A).

[634] *See* 5 U.S.C. § 604(b).

[635] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-21, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA).

[636] 5 U.S.C. § 603(a).

[637] *See id.*

facilitate competition in the provision of interstate access services. These proposals attempt to effect additional regulations reflective of the competitive marketplace. In Sections VIII.A and VIII.B we seek to establish additional pricing flexibilities for price cap incumbent LECs, while at the same time limit use of those flexibilities to deter entry, to drive existing competitors from the market, or to increase rates for those customers that lack competitive alternatives. In Section VIII.C, we seek to modify the common line rate structure should we determine that a capacity-based rate structure reflects the manner in which price cap LECs incur their costs better than the current traffic-sensitive rate structure. In Section VIII.D, we seek to refine several of our price cap rules to better reflect the manner in which price cap incumbent LECs costs are incurred. In Section VIII.E, we seek to prevent CLECs from charging unreasonable rates for terminating access service.

270. Legal Basis. The proposed action is supported by Sections 4(i), 4(j), 201-205, 208, 251, 252, 253 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 205,208, 251, 252, 253, 403.

271. Description, potential impact and number of small entities affected. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[638] The RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[639] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[640] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). [641] The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.[642]

[638] 5 U.S.C. § 603(b)(3).

[639] *Id.* § 601(6).

[640] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[641] Small Business Act, 15 U.S.C. § 632 (1996).

[642] 13 C.F.R. § 121.201.

Total Number of Telephone Companies Affected:

272. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[643] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[644] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

273. *Price Cap Local Exchange Carriers.* The proposals in Section VIII.A-D apply only to price cap LECs. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, we estimate that significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals.

274. *Competitive Local Exchange Carriers.* The proposals in Section VIII.E apply only to competitive LECs. Neither the Commission nor the Small Business Administration has developed a definition of small providers of local exchange service. The closest applicable definition under Small Business Administration rules is for telephone telecommunications companies other than radiotelephone (wireless) companies.[645] The most reliable source of information regarding the number of competitive LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider

[643] 5 U.S.C. § 601(3).

[644] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[645] Standard Industrial Classification (SIC) Code 4813.

services or competitive local exchange carrier services.[646] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

275. Reporting, record keeping and other compliance requirements. We expect that, on balance, the proposals in this Further Notice will slightly increase price cap LECs' administrative burdens. The proposals in Section VIII.A would require at least one additional tariff filing, and may require additional showings. The proposals in Section VIII.B will require a price cap LEC, to the extent that it chooses to avail itself of the additional flexibility, to file a petition demonstrating that it has met the triggers, and make an initial tariff filing. We expect that the proposals in Sections VIII.C and VIII.D would establish new methodologies that price cap LECs would need to apply in their tariff filings, but otherwise should not affect their administrative burdens.

276. We expect that the proposals in Section VIII.E will have no effect on the administrative burdens of competitive LECs, because they would have no additional filing requirement. They would only be required to respond to complaints.

277. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered. In this Notice, we sought comment on how a number of proposals would affect small entities. We believe that overall, these proposals should have a positive economic impact on small price cap LECs. The proposals in Sections VIII.A, VIII.B, and VIII.C should enable small price cap LECs to price their regulated services in a manner that is more reflective of the underlying costs of these services. In Sections VIII.C, we have also sought comment on whether small interexchange carriers would be artificially disadvantaged if we adopt a capacity-based local switching rate structure. The proposals in Sections VIII.D and VIII.E should not have a significant economic impact on small entities. We seek comment on these proposals and urge that parties support their comments with specific evidence and analysis.

278. Federal rules which overlap, duplicate or conflict with this proposal. None.

C. Paperwork Reduction Act

279. On April 1, 1997, the Office of Management and Budget (OMB) approved all of our proposed information collection requirements in accordance with the Paperwork

[646] FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers*, Figure 1 (number of carriers paying into the TRS Fund by type of carrier) (Jan. 1999).

Reduction Act.[647] The OMB made one recommendation, suggesting that we try "to minimize the number of new filings that firms must create in order to be compliant with the rules adopted . . . ." We have carefully considered the recommendation of OMB, and in the course of preparing this Order, we have decided to modify several of the collection requirements proposed in the *Access Reform NPRM*.[648] This Order has greatly reduced the number of filings a price cap LEC will have to submit to receive pricing flexibility. In addition, many of the filings should take less time to make than was originally proposed. For example, we estimate that based on the competitive triggers we adopted, it should only take five hours each to make two Phase II showings per MSA for all special access and dedicated transport services, whereas the original filing to OMB estimated that each Phase II showing would take approximately 300 hours.

280. The Further Notice of Proposed Rulemaking contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the OMB to take this opportunity to comment on the information collections contained in the Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due 60 days from date of publication of the Further Notice of Proposed Rulemaking in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Filing Comments

281. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October 29, 1999, and reply comments on or before November 29, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

282. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appears in the caption of

[647] *Notice of Office Management and Budget Action*, OMB No 3060-0760 (Apr. 1, 1997).

[648] Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 (1996) (*Access Reform NPRM*).

this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

283. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554.

X. ORDERING CLAUSES

284. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to Parts 1, 61, and 69 of the Commission's rules, 47 C.F.R. Parts 1, 61, 69, ARE ADOPTED as set forth in Appendix B.

285. IT IS FURTHER ORDERED that the rule revisions adopted in this Order will be effective 30 days after publication of this Order in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

286. IT IS FURTHER ORDERED that, pursuant to section 10(c) of the Communications Act of 1934, 47 U.S.C. § 160(c), the period for review by the Commission of the petition for forbearance filed by U S West Communications, Inc., CC Docket No. 98-157, IS EXTENDED by 90 days.

287. IT IS FURTHER ORDERED that the petition for declaratory ruling filed by AT&T, CCB/CPD File No. 98-63, IS DENIED.

288. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN OF the rulemaking described above and that COMMENT IS SOUGHT on these issues.

289. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of the Further Notice of Proposed

Rulemaking, including the Regulatory Flexibility Act analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Parties Filing Pleadings

I. *Price Cap Second FNRPM*

A. Comments

1. Ad Hoc Telecommunications Users Group (Ad Hoc)
2. Ameritech
3. Association for Local Telephone Services (ALTS)
4. AT&T Corp. (AT&T)
5. Bell Atlantic Telephone Companies (Bell Atlantic)
6. BellSouth Telecommunications, Inc. (BellSouth)
7. California Cable Television Association (CCTA)
8. Cincinnati Bell Telephone Co. (Cincinnati Bell)
9. Comcast Corp. (Comcast)
10. Competitive Telecommunications Association (CompTel)
11. Cox Enterprises, Inc. (Cox)
12. General Services Administration (GSA)
13. GTE Service Corp. (GTE)
14. ICG Access Services, Inc. (ICG)
15. Information Industry Association (IIA)
16. LCI International, Inc. (LCI)
17. LDDS WorldCom (LDDS)
18. Lincoln Telephone and Telegraph Co. (Lincoln)
19. MCI Telecommunications Corp. (MCI)
20. Metropolitan Fiber Systems (MFS)
21. National Telephone Cooperative Association (NTCA)
22. NYNEX Telephone Companies (NYNEX)
23. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
24. Pacific Bell and Nevada Bell (together, Pacific Bell)
25. Southern New England Telephone Co. (SNET)
26. Southwestern Bell Telephone Co. (SBC)
27. Sprint Corporation (Sprint)
28. Sprint Telecommunications Venture
29. Tele-Communications Association (TCA)
30. Telecommunications Resellers Association (TRA)
31. Teleport Communications Group Inc. (Teleport)
32. Time Warner Communications Holdings, Inc., (Time Warner)
33. U S West Communications, Inc. (U S West)
34. United States Telephone Association (USTA)

B. Replies

1. Ad Hoc
2. Ameritech
3. Association for Local Telecommunications Services (ALTS)
4. AT&T
5. Bell Atlantic
6. BellSouth
7. Cincinnati Bell
8. Comcast
9. Competitive Telecommunications Association (CompTel)
10. Cox
11. Frontier
12. General Services Administration (GSA)
13. GTE
14. LDDS
15. MCI
16. MFS
17. National Cable Television Association, Inc. (NCTA)
18. NYNEX
19. Pacific Bell
20. Southwestern Bell (SBC)
21. Sprint
22. Sprint Telecommunications Venture
23. Teleport
24. Time Warner
25. TRA
26. U S West
27. USTA

II. *Access Reform NPRM*

A. Comments

1. ACC Long Distance
2. Ad Hoc Telecommunications Users Committee (Ad Hoc)
3. AirTouch Communications, Inc. (AirTouch)
4. Alabama Public Service Commission (Alabama Commission)
5. Alaska Telephone Association
6. Aliant
7. Alliance for Public Technology
8. Allied Communications Group, Inc. (Allied)
9. ALLTEL Telephone Services Corporation (ALLTEL)

10. America On-Line
11. American Association for Adult and Continuing Education, et al.
12. American Association for Retired Person, Consumer Federation of America, and Consumers Union (AARP, et al.)
13. American Library Association
14. American Petroleum Institute (API)
15. America's Carriers Telecommunication Association (ACTA)
16. Ameritech
17. Association for Local Telecommunications Services (ALTS)
18. AT&T
19. Bankers Clearinghouse, et al.
20. Bell Atlantic Telephone Companies and NYNEX (BA/NYNEX)
21. BellSouth Corporation, BellSouth Telecommunications, Inc. (BellSouth)
22. California Cable Television Association (CCTA)
23. (People of the State of) California and the Public Utility Commission of the State of California (California Commission)
24. Cathey, Hutton & Associates
25. Centennial Cellular Corp.
26. Cincinnati Bell Telephone Company (Cincinnati Bell)
27. Citizens for a Sound Economy Foundation (CSE)
28. Citizens Utilities Company (Citizens)
29. Commercial Internet Exchange Association (CIX)
30. Communications Workers of America (CWA)
31. Competition Policy Institute (CPI)
32. Competitive Telecommunications Association (CompTel)
33. Compuserve, Inc. and Prodigy Services Corp. (Compuserve)
34. Consumer Project on Technology (Consumer Project)
35. District of Columbia Public Service Commission (District of Columbia Commission)
36. Evans Telephone Company, et al. (Small Western LECs)
37. Excel Telecommunications, Inc. (Excel)
38. Florida Public Service Commission (Florida Commission)
39. Frederick & Warinner, L.L.C.
40. Frontier Corporation (Frontier)
41. General Communication, Inc. (GCI)
42. General Services Administration/Department of Defense (GSA/DOD)
43. Gray Panthers
44. GTE Service Corp. (GTE)
45. GVNW Inc./Management (GVNW)
46. Harris, Skrivan & Associates, LLC
47. ICG Telecom Group, Inc. (ICG)
48. Illinois Commerce Commission (Illinois Commission)
49. Illuminet
50. Independent Telephone and Telecommunications Alliance (ITTA)

51. Information Industry Association (IIA)
52. Interactive Services Association
53. International Communications Association (ICA)
54. Internet Access Coalition
55. ITCs, Inc.
56. IXC Long Distance, Inc.
57. John Staurulakis, Inc. (Staurulakis)
58. Kansas Corporation Commission (Kansas Commission)
59. LCI International Telecom Corp. (LCI)
60. MCI
61. Media Access Project, et al.
62. Microsoft Corporation (Microsoft)
63. Minnesota Independent Coalition (Minnesota Independent Coalition)
64. Missouri Public Service Commission (Missouri Commission)
65. National Association of Regulatory Utility Commissioners (NARUC)
66. National Cable Television Association, Inc. (NCTA)
67. National Exchange Carrier Association, Inc. (NECA)
68. New York State Department of Public Service (New York Commission)
69. Northern Arkansas Telephone Company
70. Northern Marianna Islands (Commonwealth of)
71. Ohio Consumers' Counsel (Ohio Consumers' Counsel)
72. Ohio Public Utilities Commission (Ohio Commission)
73. Ozarks Technical Community College
74. Pacific Telesis Group (PacTel)
75. Pennsylvania Internet Service Providers (Pennsylvania ISPs)
76. Personal Communications Industry Association (PCIA)
77. Public Utilities Commission of Texas (Texas Commission)
78. Public Utility Commission of Oregon (Oregon Commission)
79. Puerto Rico Telephone Company (PRTC)
80. Jon Radoff
81. Roseville Telephone Company (Roseville)
82. Rural Telephone Coalition (RTC)
83. Rural Telephone Finance Cooperative
84. Rural Utilities Service (RUS)
85. SDN Users Association, Inc.
86. Service-oriented Open Network Technologies, Inc. (SONETECH)
87. South Dakota Public Utilities Commission (South Dakota Commission)
88. Southern New England Telephone Co. (SNET)
89. Southwestern Bell (SBC)
90. Spectranet Interactive, Inc. (Spectranet)
91. Sprint
92. State Consumer Advocates
93. TCA, Inc. (TCA)
94. TDS Telecommunications Corporation (TDS)

95. Telco Communications Group, Inc.
96. Telecommunications Resellers Association (TRA)
97. Tele-Communications, Inc. (TCI)
98. Teleport
99. Tennessee Regulatory Authority (Tennessee Commission)
100. Texas Office of Public Utility Counsel (Texas Public Utility Counsel)
101. Time Warner Communications Holdings, Inc. (Time Warner)
102. U S West
103. USTA
104. Washington Independent Telephone Association (WITA)
105. Washington Utilities and Transportation Commission (Washington Commission)
106. Lyman C. Welch
107. Western Alliance
108. WinStar Communications, Inc. (WinStar)
109. WorldCom, Inc. (WorldCom)

B. Replies

1. ACC Long Distance
2. Ad Hoc
3. Alarm Industry Communications Committee
4. State of Alaska (Alaska Commission)
5. Aliant
6. Alliance for Public Technology
7. ALLTEL Telephone Services Corporation (ALLTEL)
8. America On-Line
9. American Association for Adult and Continuing Education, et al.
10. American Association for Retired Person, Consumer Federation of America, and Consumers Union, and Texas Office of Public Utility Counsel (AARP, et al.)
11. American Communications Services, Inc.
12. Ameritech
13. API
14. Arch Communications Group
15. Association for Local Telecommunications Services (ALTS)
16. AT&T
17. Bankers Clearinghouse, et al.
18. Bell Atlantic Telephone Companies and NYNEX (BA/NYNEX)
19. BellSouth Corporation, BellSouth Telecommunications, Inc. (BellSouth)
20. (People of the State of) California and the Public Utility Commission of the State of California (California Commission)
21. Colorado Library Education and Healthcare Telecommunications Coalition

22. Commercial Internet Exchange Association (CIX)
23. Competitive Telecommunications Association (CompTel)
24. Compuserve
25. Consumer Project on Technology (Consumer Project)
26. Cox
27. General Communication, Inc. (GCI)
28. General Services Administration/Department of Defense (GSA/DOD)
29. Consumers' Utility Counsel Division, [Georgia] Governor's Office of Consumer Affairs (Georgia Consumers' Utility Counsel)
30. Georgia Public Service Commission (Georgia Commission)
31. GTE Service Corp. (GTE)
32. GVNW Inc./Management (GVNW)
33. State of Hawaii (Hawaii)
34. ICG Telecom Group, Inc. (ICG)
35. Internet Access Coalition
36. IXC Long Distance, Inc.
37. LCI International Telecom Corp. (LCI)
38. Maine Public Utilities Commission (Maine Commission)
39. MCI
40. Media Access Project, et al.
41. Minnesota Independent Coalition (Minnesota Independent Coalition)
42. Minnesota Internet Services Trade Association
43. National Cable Television Association, Inc. (NCTA)
44. National Exchange Carrier Association, Inc. (NECA)
45. Ohio Consumers' Counsel (Ohio Consumers' Counsel)
46. Ohio Public Utilities Commission (Ohio Commission)
47. Pacific Telesis Group (PacTel)
48. Personal Communications Industry Association (PCIA)
49. PSINet, Inc. (PSINet)
50. Puerto Rico Telephone Company (PRTC)
51. Roseville Telephone Company (Roseville)
52. Rural Telephone Coalition (RTC)
53. Southern New England Telephone Co. (SNET)
54. Southwestern Bell Telephone Company (SBC)
55. Sprint Corporation (Sprint)
56. State Consumer Advocates
57. TDS Telecommunications Corporation (TDS)
58. Telco Communications Group, Inc.
59. Tele-Communications, Inc. (TCI)
60. Teleport Communications Group Inc. (Teleport)
61. Texas Association of Broadcasters
62. Texas Office of Public Utility Counsel (Texas Public Utility Counsel)
63. The Gallegos Family Network
64. Time Warner Communications Holdings, Inc. (Time Warner)

65. U S West
66. USTA
67. WorldCom, Inc. (WorldCom)

III. *October 5 Public Notice*

A. Comments

1. Ad Hoc
2. America's Carriers Telecommunication Association (ACTA)
3. Ameritech
4. API
5. Association for Local Telecommunications Services (ALTS)
6. AT&T
7. Bell Atlantic
8. BellSouth
9. Cable & Wireless (Cable & Wireless)
10. Cincinnati Bell
11. CompTel
12. Consumer Federation of America (CFA)
13. Consumers Union
14. CoreComm Newco, Inc. (CoreComm)
15. CPI
16. CTSI, Inc. (CTSI)
17. CWA
18. ENTUA
19. Excel Telecommunications, Inc. (Excel)
20. General Services Administration (GSA)
21. GTE
22. KMC Telecom, Inc. (KMC)
23. MCI WorldCom, Inc. (MCI)
24. MediaOne Group, Inc. (MediaOne)
25. NEXTLINK Communications, Inc. (NEXTLINK)
26. Operator Communications, Inc. (OCI)
27. RCN Telecom Services, Inc. (RCN)
28. SBC (SBC)
29. United States Small Business Administration (SBA)
30. Small Business Survival Committee
31. Sprint
32. Time Warner
33. TRA
34. U S West
35. USTA

36. Washington Utilities and Transportation Commission (Washington Commission)
37. Western Wireless Corporation (Western Wireless)

B. Replies

1. Ad Hoc
2. Ameritech
3. API
4. AT&T
5. Bell Atlantic
6. BellSouth
7. CFA
8. Cincinnati Bell
9. CompTel
10. CTSI
11. Excel
12. General Services Administration (GSA)
13. GST Telecom Inc. (GST)
14. GTE
15. ITTA
16. KMC
17. MCI WorldCom, Inc. (MCI)
18. NEXTLINK
19. RCN Telecom Services, Inc. (RCN)
20. SBC (SBC)
21. Sprint
22. TRA
23. U S West
24. USTA

IV. *AT&T Petition for Declaratory Ruling*

A. Comments

1. ALLTEL Communications
2. Ameritech
3. Association for Local Telecommunications Services (ALTS)
4. BellSouth Telecommunications, Inc. (BellSouth)
5. Cable & Wireless USA. Inc. (Cable & Wireless)
6. Cablevision Lightpath, Inc. and NEXTLINK Communications, Inc.
7. Cox Communications (Cox)
8. CTSI, Inc. (CTSI)

9. Freedom Ring Communications
10. Frontier Corp. (Frontier)
11. GTE Service Corp (GTE)
12. GVNW Inc./Management (GVNW)
13. Heart of Iowa Communications, Inc.
14. MCI WorldCom, Inc. (MCI)
15. MediaOne Group, Inc. (MediaOne)
16. MGC Communications, Inc.
17. Optel, Inc.
18. Rainer Cable, Inc.
19. SBC Communications (SBC)
20. Sprint Communications Co., L.P. (Sprint)
21. Telecommunications Resellers Association (TRA)
22. Teligent, Inc.
23. The Orlando Telephone Company
24. Time Warner Telecom (Time Warner)
25. Total Telecommunications Services, Inc.
26. U S West Communications, Inc. (U S West)
27. WinStar Communications, Inc. (WinStar)

B. Replies

1. Ameritech
2. Association for Local Telecommunications Services (ALTS)
3. AT&T Corp. (AT&T)
4. Bell Atlantic
5. CTSI, Inc. (CTSI)
6. MCI WorldCom, Inc. (MCI)
7. MGC Communications, Inc.
8. NEXTLINK Communications, Inc. (NEXTLINK)
9. SBC Communications, Inc. (SBC)
10. Sprint Communications Co., L.P. (Sprint)
11. Total Telecommunications Services, Inc.
12. WinStar Communications, Inc. (WinStar)

V. Forbearance Petitions

1. U S West, Phoenix MSA

a. Comments

1. Ameritech Operating Companies (Ameritech)
2. AT&T Corp. (AT&T)

3. BellSouth Telecommunications, Inc. (BellSouth)
4. Competitive Telecommunications Association (CompTel)
5. GST Telecom Inc.
6. GTE Service Corp. (GTE)
7. MCI WorldCom, Inc. (MCI)
8. Qwest Communications Corp. (Qwest)
9. SBC Communications, Inc. (SBC)
10. Sprint Corporation (Sprint)
11. TSR Wireless LLC (TSR)
12. United States Telephone Association (USTA)

b. Replies

1. Ad Hoc Telecommunications Users Committee (Ad Hoc)
2. AT&T Corp. (AT&T)
3. Bell Atlantic Telephone Companies (Bell Atlantic)
4. GST Telecom Inc.
5. MCI WorldCom, Inc. (MCI)
6. U S West Communications, Inc. (U S West)

2. SBC, Fourteen SBC MSAs

a. Comments

1. Ameritech Operating Companies (Ameritech)
2. Association for Local Telecommunications Services (ALTS)
3. AT&T Corp. (AT&T)
4. Competitive Telecommunications Association (CompTel)
5. GST Telecom Inc.
6. Hyperion Telecommunications, Inc. (Hyperion)
7. KMC Telecom, Inc. (KMC)
8. Logix Communications Corporation.
9. MCI WorldCom, Inc. (MCI)
10. MediaOne Group, Inc. (MediaOne)
11. Network Access Solutions, Inc.
12. NEXTLINK Communications, Inc.
13. Sprint Corporation (Sprint)
14. Telecommunications Resellers Association (TRA)
15. Time Warner Communications Holdings, Inc. d/b/a Time Warner (Time Warner)
16. U S West Communications, Inc. (U S West)
17. United States Telephone Association (USTA)
18. UTC, The Telecommunications Association

b. Replies

1. Ad Hoc Telecommunications Users Committee (Ad Hoc)
2. Bell Atlantic Telephone Companies (Bell Atlantic)
3. Hyperion Telecommunications, Inc. (Hyperior)
4. KMC Telecom, Inc. (KMC)
5. Level 3 Communications Inc.
6. Logix Communications, Corporation
7. NEXTLINK Communications, Inc. (NEXTLINK)
8. SBC Communications, Inc. (SBC)
9. Telecommunications Resellers Association (TRA)

3. U S West, Seattle MSA

a. Comments

1. Association for Local Telephone Services (ALTS)
2. AT&T Corp. (AT&T)
3. Competitive Telecommunications Association/America's Carriers Telecommunications Association (CompTel)
4. Ms. Sue Conachan
5. Ms. Kathryn Fancher
6. Focal Communications, Inc. (Focal)
7. General Services Administration (GSA)
8. GST Telecom Inc.
9. Hyperion Telecommunications, Inc. (Hyperion)
10. MCI WorldCom, Inc. (MCI)
11. Network Access Solutions, Inc.
12. NEXTLINK Communications Inc. and Electric Lightwave, Inc. (NEXTLINK)
13. SBC Communications (SBC)
14. Sprint Corporation (Sprint)
15. Telecommunications Resellers Association (TRA)
16. Washington Association of Internet Service Providers
17. WGHT Pompton Lakes NJ

b. Replies

1. Bell Atlantic Telephone Companies (Bell Atlantic)
2. General Services Administration (GSA)
3. Qwest Communications Corp. (Qwest)
4. U S West Communications, Inc. (U S West)

4. Bell Atlantic, Twelve Bell Atlantic Study Areas

a. Comments

1. Association for Local Telecommunications Services (ALTS)
2. AT&T Corp. (AT&T)
3. Cablevision Lightpath, Inc
4. Capital One Financial Services
5. CBS Broadcasting Corporation, National Broadcasting Company, Turner Broadcasting System, Inc., and The Walt Disney Corporation
6. Competitive Telecommunications Association/America's Carriers Telecommunications Association (CompTel)
7. CTSI, Inc & RCN Telecom
8. General Services Administration (GSA)
9. Hyperion Telecommunications, Inc. (Hyperion)
10. Mr. Marcel Kates
11. KMC Telecom, Inc
12. Marriott Corporation (Marriott)
13. MCI WorldCom, Inc. (MCI)
14. MediaOne Group (MediaOne)
15. Network Access Solutions, Inc.
16. Network Plus, Inc.
17. NEXTLINK Communications, Inc. (NEXTLINK)
18. Sprint Corporation (Sprint)
19. Telecommunications Resellers Association
20. Mr. Jerry Thompson
21. Time Warner Communications Holdings, Inc. d/b/a Time Warner (Time Warner)
22. United States Telephone Association (USTA)
23. xDSL Networks, Inc.

b. Replies

1. Bell Atlantic Telephone Companies (Bell Atlantic)
2. General Services Administration (GSA)

5. Ameritech, Chicago LATA

a. Comments

1. Association for Local Telephone Services (ALTS)
2. AT&T Corp. (AT&T)
3. Competitive Telecommunications Association (CompTel)

4. Core Comm, Ltd. (CoreComm)
5. Focal Communications Corporation and KMC Telecom, Inc.
6. MCI WorldCom, Inc. (MCI)
7. McLeod USA Telecommunications Services, Inc.
8. NEXTLINK Communications, Inc. (NEXTLINK)
9. SBC Communications, Inc. (SBC)
10. Sprint Corporation (Sprint)
11. Telecommunications Resellers Association (TRA)
12. United States Telephone Association (USTA)

b. Replies

1. Ameritech Operating Companies (Ameritech)

APPENDIX B

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 0 -- COMMISSION ORGANIZATION

1. The authority citation continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Revise § 0.291 by adding paragraph (i) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(i) *Authority concerning petitions for pricing flexibility.*

(1) The Chief, Common Carrier Bureau, shall have authority to act on petitions filed pursuant to Part 69, Subpart H, of this chapter for pricing flexibility involving special access and dedicated transport services. This authority is not subject to the limitation set forth in paragraph (a)(2) of this section.

(2) The Chief, Common Carrier Bureau, shall not have authority to act on petitions filed pursuant to Part 69, Subpart H, of this chapter for pricing flexibility involving common line and traffic sensitive services.

PART 1 -- PRACTICE AND PROCEDURE

3. The authority citation continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*, 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

4. Revise § 1.773 by adding paragraph (a)(1)(v), to read as follows:

(v) For the purposes of this section, any tariff filing by a price cap LEC filed pursuant to the requirements of Section 61.42(d)(4)(ii) of this chapter will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

5. Add § 1.774 to read as follows:

§ 1.774 Pricing flexibility

(a) *Petitions.*

(1) A petition seeking pricing flexibility for specific services pursuant to Part 69, Subpart H, of this chapter, with respect to a metropolitan statistical area (MSA), as defined in Section 22.909(a) of this chapter, or the non-MSA parts of a study area, must show that the price cap LEC has met the relevant thresholds set forth in Part 69, Subpart H, of this chapter.

(2) The petition must make a separate showing for each MSA for which the petitioner seeks pricing flexibility, and for the portion of the study area that falls outside any MSA.

(3) Petitions seeking pricing flexibility for services described in Sections 69.709(a) and 69.711(a) of this chapter must include:

(i) the total number of wire centers in the relevant MSA or non-MSA parts of a study area, as described in Section 69.707 of this chapter;

(ii) the number and location of the wire centers in which competitors have collocated in the relevant MSA or non-MSA parts of a study area, as described in Section 69.707 of this chapter;

(iii) in each wire center on which the price cap LEC bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; and

(iv)(A) the percentage of the wire centers in the relevant MSA or non-MSA area, as described in Section 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; or

(B) the percentage of total base period revenues generated by the services at issue in the petition that are attributable to wire centers in the relevant MSA or non-MSA area, as described in Section 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center.

(4) Petitions seeking pricing flexibility for services described in Section 69.713(a) of this chapter must make a showing sufficient to meet the relevant requirements of Section 69.713.

(b) *Confidential treatment* A price cap LEC wishing to request confidential treatment of information contained in a pricing flexibility petition should demonstrate, by a preponderance of the evidence, that the information should be withheld from public inspection in accordance with the requirements of Section 0.459 of this chapter.

(c) *Oppositions.* Any interested party may file comments or oppositions to a petition for pricing flexibility. Comments and oppositions shall be filed no later than 15 days after the petition is filed. Time shall be computed pursuant to Section 1.4 of this part.

(d) *Replies.* The petitioner may file a reply to any oppositions filed in response to its petition for pricing flexibility. Replies shall be filed no later than 10 days after comments are filed. Time shall be computed pursuant to Section 1.4 of this part.

(e) *Copies, service.*

(1)(i) Any price cap LEC filing a petition for pricing flexibility must submit its petition pursuant to the Commission's Electronic Tariff Filing System (ETFS), following the procedures set forth in Section 61.14(a) of this chapter.

(ii) The price cap LEC must provide to each party upon which the price cap LEC relies to meet its obligations under paragraph (a)(3)(iii) of this section, the information it provides about that party in its petition, even if the price cap LEC requests that the information be kept confidential under paragraph (b) of this section.

(A) The price cap LEC must certify in its pricing flexibility petition that it has made such information available to the party.

(B) The price cap LEC may provide data to the party in redacted form, revealing only that information to the party that relates to the party.

(C) The price cap LEC must provide to the Commission copies of the information it provides to such parties.

(2)(i) Interested parties filing oppositions or comments in response to a petition for pricing flexibility may file those comments through ETFS.

(ii) Any interested party electing to file an opposition or comment in response to a pricing flexibility petition through a method other than ETFS must file an original and four copies of each opposition or comment with the Commission, as follows: the original and three copies of each pleading shall be filed with the Secretary, FCC, Room CY-A257, 445 Twelfth St. S.W., Washington, D.C., 20554; one copy must be delivered directly to the Commission's copy contractor, International Transcription Service, Inc., 1231 Twentieth St. N.W., Washington, D.C. 20036. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Pricing Division; and the Chief, Tariff and Pricing Analysis Branch of the Competitive Pricing Division.

(iii) In addition, oppositions and comments shall be served either personally or via facsimile on the petitioner. If an opposition or comment is served via facsimile, a copy of the opposition or comment must be sent to the petitioner via first class mail on the same day as the facsimile transmission.

(3) Replies shall be filed with the Commission through ETFS. In addition, petitioners choosing to file a reply must serve a copy on each party filing an opposition or comment, either personally or via facsimile. If a reply is served via facsimile, a copy of the reply must be sent to the recipient of that reply via first class mail on the same day as the facsimile transmission.

(f) *Disposition.*

(1) A petition for pricing flexibility pertaining to special access and dedicated transport services shall be deemed granted unless the Chief, Common Carrier Bureau, denies the petition no later than 90 days after the close of the pleading cycle. The period for filing applications for review begins the day the Bureau grants or denies the petition, or the day that the petition is deemed denied. Time shall be computed pursuant to Section 1.4 of this part.

(2) A petition for pricing flexibility pertaining to common-line and traffic-sensitive services shall be deemed granted unless the Commission denies the petition no later than five months after the close of the pleading cycle. Time shall be computed pursuant to Section 1.4 of this part.

PART 61 -- TARIFFS

6. The authority citation continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

7. Amend § 61.3 by revising paragraph (m) and adding paragraphs (nn), (oo), and (pp), to read as follows:

§ 61.3 Definitions.

* * * * *

(m) *Contract-based Tariff.* A tariff based on a service contract entered into between a non-dominant carrier and a customer, or between a customer and a price cap local exchange carrier which has obtained permission to offer contract-based tariff services pursuant to Part 69, Subpart H, of this chapter.

* * * * *

(nn) *Corridor service.* "Corridor service" refers to interLATA services offered in the "limited corridors" established by the District Court in United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1107 (D.D.C. 1983).

(oo) *Toll dialing parity.* "Toll dialing parity" exists when there is dialing parity, as defined in Section 51.5 of this chapter, for toll services.

(pp) *Loop-based services.* Loop-based services are services that employ Subcategory 1.3 facilities, as defined in Section 36.154 of this chapter.

8. Amend § 61.42 by redesignating paragraph (d)(4) as (d)(4)(i), and adding paragraph (d)(4)(ii), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(4) * * *

(ii) If a price cap carrier has implemented interLATA and intraLATA toll dialing parity everywhere it provides local exchange services at the holding company level, that price cap carrier may file a tariff revision to remove corridor and interstate intraLATA toll services from its interexchange basket.

9. Amend § 61.45 by revising paragraph (d)(1)(vii), to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(1) * * *

(vii) Retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark, subject to the limitation in Section 69.731 of this chapter.

10. Amend § 61.46 to add paragraph (i) to read as follows:

§ 61.46 Adjustments to the API.

* * * * *

(i) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

11. Amend § 61.47 to revise paragraphs (a) and (e)(1), and to add paragraphs (f) and (k), to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

(a) In connection with any price cap tariff filing proposing changes in the rates of services in service categories, subcategories, or density zones, the carrier must calculate an SBI value for each affected service category, subcategory, or density zone pursuant to the following methodology: * * *

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Each band shall limit the pricing flexibility of the service category, subcategory, as reflected in the SBI, to an annual increase of a specified percent listed in this paragraph below, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local

exchange carriers subject to price cap regulation as that term is defined in Section 61.3(x) of this part, there shall be no lower pricing band for any service category or subcategory.

(1) Five percent:
(i) Local switching (traffic sensitive basket)
(ii) Information (traffic sensitive basket)
(iii) Database Access services (traffic sensitive basket)
(iv) 800 Database Vertical Services subservice (traffic sensitive basket)
(v) Billing Name and Address (traffic sensitive basket)
(vi) Local switching trunk ports (traffic sensitive basket)
(vii) Signalling Transfer Point Port Termination (traffic sensitive basket)
(viii) Voice grade (trunking basket)
(ix) Audio/Video (trunking basket)
(x) Total High Capacity (trunking basket)
(xi) DS1 subservice (trunking basket)
(xii) DS3 subservice (trunking basket)
(xiii) Wideband (trunking basket)

* * *

(f) A local exchange carrier subject to price cap regulation may establish density zones pursuant to the requirements set forth in Section 69.123 of this chapter, for any service in the trunking basket, other than the interconnection charge set forth in Section 69.124 of this chapter. The pricing flexibility of each zone shall be limited to an annual increase of 15 percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for any density zone.

* * * * *

(k) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

12. In § 61.49, revise paragraphs (f)(2) and (g), and add (f)(3) and (f)(4), to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(f) * * *

(2) Each tariff filing submitted by a price cap LEC that introduces a new loop-based service, as defined in Section 61.3(pp) of this part -- including a restructured unbundled basic service element (BSE), as defined in Section 69.2(mm) of this chapter, that constitutes a new loop-based service -- that is or will later be included in a basket, must be accompanied by cost data sufficient to establish that the new loop-based service or unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

(3) A price cap LEC may submit without cost data any tariff filings that introduce new services, other than loop-based services.

(4) A price cap LEC that has removed its corridor or interstate intraLATA toll services from its interexchange basket pursuant to Section 61.42(d)(4)(ii) of this part, may submit its tariff filings for corridor or interstate intraLATA toll services without cost data.

(g) Each tariff filing submitted by a local exchange carrier subject to price cap regulation that introduces a new loop-based service or a restructured unbundled basic service element (BSE), as defined in Section 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in Section 69.121 of this chapter, must also be accompanied by:

* * *

13. Add § 61.55 to read as follows:

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap LECs permitted to offer contract-based tariffs under Section 69.727(a) of this chapter.

(b) Composition of contract-based tariffs shall comply with Sections 61.54(b) through (i) of this part.

(c) Contract-based tariffs shall include the following:

(1) The term of contract, including any renewal options;

(2) A brief description of each of the services provided under the contract;

(3) Minimum volume commitments for each service;

(4) The contract price for each service or services at the volume levels committed to by the customers;

(5) A general description of any volume discounts built into the contract rate structure; and

(6) A general description of other classifications, practices, and regulations affecting the contract rate.

14. Amend § 61.58 to revise paragraphs (b) and (c), and add (d), to read as follows:

§ 61.58 Notice requirements.

* * * * *

(b) Tariffs for new services filed by price cap local exchange carriers shall be filed on at least one day's notice.

(c) Contract-based tariffs filed by price cap local exchange carriers pursuant to Sections 69.727(a) of this chapter shall be filed on at least one day's notice.

(d)(1) A local exchange carrier that is filing a tariff revision to remove its corridor or interstate intraLATA toll services from its interexchange basket pursuant to Section 61.42(d)(4)(ii) of this part shall submit such filing on at least fifteen days' notice.

(2) A local exchange carrier that has removed its corridor and interstate intraLATA toll services from its interexchange basket pursuant to Section 61.42(d)(4)(ii) of this part shall file subsequent tariff filings for corridor or interstate intraLATA toll services on at least one day's notice.

PART 69 -- ACCESS CHARGES

15. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

16. Amend § 69.4 by revising subparagraph (e)(7) to read as follows:

§ 69.3 Filing of Access Service Tariffs

* * * * *

(7) Such a tariff shall not contain charges for any access elements that are disaggregated or deaveraged within a study area that is used for purposes of jurisdictional separations, except as otherwise provided in this chapter.

17. Amend § 69.4 by revising paragraph (g) and adding paragraph (i), to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(g) Local exchange carriers subject to price cap regulation, as that term is defined in Section 61.3(x) of this chapter, may establish appropriate rate elements for a new service, within the meaning of Section 61.3(t) of this chapter, in any tariff filing with a scheduled effective date after [insert date 30 days after publication in the Federal Register].

* * * * *

(i) Paragraphs (b) and (h) of this section are not applicable to a price cap local exchange carrier to the extent that it has been granted the pricing flexibility in Section 69.727(b)(1) of this part.

18. In § 69.110, revise paragraph (e) to read as follows:

§ 69.110 Entrance facilities.

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, and Subpart H of this chapter, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3.

19. Amend § 69.123 by revising paragraphs (a), (b), (e)(2), and (f)(1), to read as follows:

§ 69.123 Density pricing zones.

(a)(1) Incumbent local exchange carriers not subject to price cap regulation may establish a reasonable number of density pricing zones within each study area that is used for purposes of jurisdictional separations, in which at least one interconnector has taken the subelement of connection charges for expanded interconnection described in Section 69.121(a)(1) of this subpart.

(2) Such a system of pricing zones shall be designed to reasonably reflect cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones.

(3) Non-price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of both special and switched access pursuant to paragraphs (c) and (d) of this section.

(b)(1) Incumbent local exchange carriers subject to price cap regulation may establish any number of density zones within a study area that is used for purposes of jurisdictional separations, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of that carrier's trunking basket revenues within that study area, calculated pursuant to the methodology set forth in Section 69.725 of this part.

(2) Price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of all services within the trunking basket for which zone density pricing is permitted.

(3) An access service subelement for which zone density pricing is permitted shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(4) An access service subelement for which zone density pricing is permitted which is provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains one of the locations between which the service is offered.

* * *

(e) * * *

(2) Notwithstanding Section 69.3(e)(7) of this part, incumbent local exchange carriers subject to price cap regulation may charge different rates for services in different zones pursuant to Section 61.47(f) of this chapter, provided that the charges for any such service are not deaveraged within any such zone.

(f)(1) An incumbent local exchange carrier that establishes density pricing zones under this section must reallocate additional amounts recovered under the interconnection charge prescribed in Section 69.124 of this subpart to facilities-based transport rates, to reflect the higher costs of serving lower density areas. Each incumbent local exchange carrier must reallocate costs from the interexchange charge each time it increases the ratio between the prices in its lowest-cost zone and any other zone in that study area.

* * * * *

20. Revise Part 69 by adding Subpart H to read as follows:

Subpart H -- Pricing Flexibility

§ 69.701 Application of rules in this subpart.

The rules in this subpart apply to all incumbent LECs subject to price cap regulation, as defined in Section 61.3(x) of this chapter, seeking pricing flexibility on the basis of the development of competition in parts of its service area.

§ 69.703 Definitions.

For purposes of this subpart:

(a) *Channel terminations.*

(1) A channel termination between an IXC POP and a serving wire center is a dedicated channel connecting an IXC POP and a serving wire center, offered for purposes of carrying special access traffic.

(2) A channel termination between a LEC end office and a customer premises is a dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic.

(b) *Metropolitan Statistical Area (MSA).* This term shall have the definition provided in Section 22.909(a) of this chapter.

(c) *Interexchange Carrier Point of Presence (IXC POP).* The point of interconnection between an interexchange carrier's network and a local exchange carrier's network.

(d) *Wire center.* For purposes of this subpart, the term "wire center" shall refer to any location at which an incumbent LEC is required to provide expanded interconnection for special access pursuant to Section 64.1401(a) of this chapter, and any location at which an incumbent LEC is required to provide expanded interconnection for switched transport pursuant to Section 64.1401(b)(1) of this chapter.

(e) *Study area.* A common carrier's entire service area within a state.

§ 69.705 Procedure.

Price cap LECs filing petitions for pricing flexibility shall follow the procedures set forth in Section 1.774 of this chapter.

§ 69.707 Geographic scope of petition.

(a) *MSA.*

(1) A price cap LEC filing a petition for pricing flexibility in an MSA shall include data sufficient to support its petition, as set forth in this subpart, disaggregated by MSA.

(2) A price cap LEC may request pricing flexibility for two or more MSAs in a single petition, provided that it submits supporting data disaggregated by MSA.

(b) *Non-MSA.*

(1) A price cap LEC will receive pricing flexibility with respect to those parts of a study area that fall outside of any MSA, provided that it provides data sufficient to support a finding that competitors have collocated in a number of wire centers in that non-MSA region sufficient to satisfy the criteria for the pricing flexibility sought in the petition, as set forth in this subpart, if the region at issue were an MSA.

(2) The petitioner may aggregate data for all the non-MSA regions in a single study area for which it requests pricing flexibility in its petition.

(3) A petitioner may request pricing flexibility in the non-MSA regions of two or more of its study areas, provided that it submits supporting data disaggregated by study area.

§ 69.709 Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Entrance facilities, as described in Section 69.110 of this part.

(2) Transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office, as described in Section 69.111(a)(2)(iii) of this part.

(3) Direct-trunked transport, as described in Section 69.112 of this part.

(4) Special access services, as described in Section 69.114 of this part, other than channel terminations as defined in Section 69.703(a)(2) of this subpart.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in Section 69.727(a) of this subpart, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in Section 69.707 of this subpart, competitors unaffiliated with the price cap LEC have collocated:

(1) in fifteen percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) in wire centers accounting for 30 percent of the petitioner's revenues from dedicated transport and special access services other than channel terminations between LEC end offices and customer premises, determined as specified in Section 69.725 of this subpart, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in Section 69.727(b) of this subpart, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in Section 69.707 of this subpart, competitors unaffiliated with the price cap LEC have collocated:

(1) in 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) in wire centers accounting for 65 percent of the petitioner's revenues from dedicated transport and special access services other than channel terminations between LEC end offices and customer premises, determined as specified in Section 69.725 of this subpart, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

§ 69.711 Channel terminations between LEC end offices and customer premises.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to channel terminations between LEC end offices and customer premises.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in Section 69.727(a) of this subpart, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in

Section 69.707 of this subpart, competitors unaffiliated with the price cap LEC have collocated:

(1) in 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) in wire centers accounting for 65 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in Section 69.725 of this subpart, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in Section 69.727(b) of this subpart, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in Section 69.707 of this subpart, competitors unaffiliated with the price cap LEC have collocated:

(1) in 65 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) in wire centers accounting for 85 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in Section 69.725 of this subpart, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

§ 69.713 Common line, traffic-sensitive, and tandem-switched transport services.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Common line services, as described in Sections 69.152, 69.153, and 69.154 of this part.

(2) Services in the traffic-sensitive basket, as described in Section 61.42(d)(2) of this chapter.

(3) The traffic-sensitive components of tandem-switched transport services, as described in Sections 69.111(a)(2)(i) and (ii) of this part.

(b) *Phase I Triggers.*

(1) To obtain Phase I pricing flexibility, as specified in Section 69.727(a) of this subpart, for the services identified in paragraph (a) of this section, a price cap LEC must provide convincing evidence that, in the relevant area as described in Section 69.707 of this subpart, its unaffiliated competitors, in aggregate, offer service to at least 15 percent of the price cap LEC's customer locations.

(2) For purposes of the showing required by paragraph (b)(1), the price cap LEC may not rely on service the competitors provide solely by reselling the price cap LEC's services, or provide through unbundled network elements as defined in Section 51.5 of this chapter, except that the price cap LEC may rely on service the competitors provide through the use of the price cap LEC's unbundled loops.

(c) [Reserved.]

§§ 69.714-69.724 [Reserved.]

§ 69.725 Attribution of revenues to particular wire centers.

If a price cap LEC elects to show, in accordance with Sections 69.709 or 69.711 of this subpart, that competitors have collocated in wire centers accounting for a certain percentage of revenues from the services at issue, the LEC must make the following revenue allocations:

(a) For entrance facilities and channel terminations between an IXC POP and a serving wire center, the petitioner shall attribute all the revenue to the serving wire center.

(b) For channel terminations between a LEC end office and a customer premises, the petitioner shall attribute all the revenue to the LEC end office.

(c) For any dedicated service routed through multiple wire centers, the petitioner shall attribute 50 percent of the revenue to the wire center at each end of the transmission path, unless the petitioner can make a convincing case in its petition that some other allocation would be more representative of the extent of competitive entry in the MSA or the non-MSA parts of the study area at issue.

§ 69.727 Regulatory relief.

(a) *Phase I Relief.* Upon satisfaction of the Phase I triggers specified in Sections 69.709(b), 69.711(b), or 69.713(b) of this subpart for an MSA or the non-MSA

parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in Sections 69.709(a), 69.711(a), or 69.713(a) of this subpart, respectively:

(1) Volume and term discounts;

(2) Contract tariff authority, provided that

(i) Contract tariff services are made generally available to all similarly situated customers; and

(ii) The price cap LEC excludes all contract tariff offerings from price cap regulation pursuant to Section 61.42(f)(1) of this chapter.

(iii) Before the price cap LEC provides a contract tariffed service, under Sections 69.727(a) of this subpart, to one of its long-distance affiliates, as described in Section 272 of the Communications Act of 1934, as amended, or Section 64.1903 of this chapter, the price cap LEC certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer.

(b) *Phase II Relief.* Upon satisfaction of the Phase II triggers specified in Sections 69.709(c) or 69.711(c) of this subpart for an MSA or the non-MSA parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in Sections 69.709(a) or 69.711(a) of this subpart, respectively:

(1) Elimination of the rate structure requirements in Part 69, Subpart B, of this chapter;

(2) Elimination of price cap regulation; and

(3) Filing of tariff revisions on one day's notice, notwithstanding the notice requirements for tariff filings specified in Section 61.58 of this chapter.

§ 69.729 New services.

(a) Except for new services subject to paragraph (b) of this section, a price cap LEC may obtain pricing flexibility for a new service that has not been incorporated into a price cap basket by demonstrating in its pricing flexibility petition that the new service would be properly incorporated into one of the price cap baskets and service bands for which the price cap LEC seeks pricing flexibility.

(b) Notwithstanding paragraph (a) of this section, a price cap LEC must demonstrate satisfaction of the triggers in Section 69.711(b) of this subpart to be granted pricing flexibility

for any new service that falls within the definition of a "channel termination between a LEC end office and a customer premises" as specified in Section 69.703(a)(2) of this subpart.

§ 69.731 Low-end adjustment mechanism.

(a) Any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region, or for the non-MSA portion of any study area in its service region, shall be prohibited from making any low-end adjustment pursuant to Section 61.45(d)(1)(vii) of this chapter in all or part of its service region.

(b) Any affiliate of any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region shall be prohibited from making any low-end adjustment pursuant to Section 61.45(d)(1)(vii) of this chapter in all or part of its service region.

Separate Statement
of
Commissioner Susan Ness

Re: Access Charge Reform (CC Docket No. 96-262); Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94-1).

During the past decade, exchange access competition has increased significantly. I am optimistic that the investment and infrastructure deployment that has occurred demonstrates a strong and irreversible trend toward a multiplicity of carriers in the marketplace. We must ensure that our regulations do not impede this progress.

Part of the calculus is to determine not just when to regulate, but when to deregulate. Today we take a measured step forward. By first providing incumbents with some downward pricing flexibility for high-capacity services, we allow them to respond to the new competitive marketplace for these services. Consumers should also benefit from lower prices. And, by using the presence of collocation in a market as the trigger for regulatory relief, incumbents should have additional incentives to work more cooperatively with new entrants - ironing out collocation wrinkles that should have disappeared long ago.

Although I am enthusiastic about this step forward, I cast my vote with guarded optimism. I intend to watch marketplace reactions very carefully. I prefer to act incrementally, so that we can ensure that no harm to competition occurs. If the framework we set out today is successful, I expect to take more steps in this direction as we continue down a path toward deregulation.

SEPARATE STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH
APPROVING IN PART, CONCURRING IN PART,
AND DISSENTING IN PART

Re: Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CCB/CPD File No. 98-63, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157.

It is very difficult to rationalize any occasion where the government stands between consumers and lower prices. Thus I support much of the regulatory relief contemplated in this item. As a result of the relief made possible by today's Order, the Commission will begin to release its regulatory hold on certain carriers operating in competitive markets. I respectfully dissent from portions of this item posing the mere suggestion of regulating competitive carriers in these same markets.

I fully support the immediate regulatory relief granted in this item. In my view, any reduction of unnecessary regulatory burdens is beneficial. The Commission should streamline its procedures wherever possible to lessen the administrative burden imposed by regulation.

Today's Order establishes triggering mechanisms that will open the door to a degree of regulatory relief that will, in turn, provide lower prices to consumers. While I support the relief made possible by these triggering mechanisms, I remain concerned that these tests may be more cumbersome than necessary. Although the goal of identifying competitive conditions in order to provide regulatory relief is commendable, I would have preferred a simpler approach. I am particularly concerned that the "trigger" for providing relief to providers of switched access services could prove extraordinarily cumbersome in its execution. Notwithstanding these concerns, however, I wholeheartedly support the idea of letting prices fall as a result of competitive forces, and accordingly, I concur with this section of the Order to the extent it makes this regulatory relief possible.

Although the Notice of Proposed Rulemaking details additional *de*regulatory proposals that I can support, I object to the mere suggestion of adopting *new* regulatory approaches to CLEC terminating access. On numerous occasions, I have made clear my opposition to any suggestion that the Commission may return, despite the presence of competition, to old habits of regulating carriers.[1] Any such proposal has a chilling effect on industry participants. Moreover, the mere suggestion of regulating a competitive market is antithetical to the Telecommunications Act of 1996. I also note that I am troubled by the suggestion to deaverage the Subscriber Line Charge and the Presubscribed Interexchange Carrier Charge based on geographic zones within a state, as I am not sure that it is appropriate for the federal government to set different rate elements for similar customers within a state.

---

[1] *See, e.g.*, Dissenting Statement of Commissioner Harold Furchtgott-Roth, Low-Volume Long-Distance Users, CC Docket 99-249.